

Notice of Allowability

Application No.

09/975,607

Examiner

Michael C. Wilson

Applicant(s)

CHEAH ET AL.

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the response filed 6-10-04.
2. ☒ The allowed claim(s) is/are 1 and 3-5.
3. ☒ The drawings filed on 10 June 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The title has been amended as follows:

DNA encoding mutated collagen X

Drawings

The drawings filed 6-10-04 are acceptable and have been entered.

Priority

The first line of the specification has been amended as requested.

Reasons for allowance

Claim 2 has been canceled. Claims 1 and 3-5 are allowable.

35 USC § 112

The rejection of claims 1 and 3-5 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement has been withdrawn because the claims have been limited to SEQ ID NO:2.

The rejection of claims 2, 4 and 5 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

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which applicant regards as the invention has been withdrawn because claim 2 has been canceled and claim 4 has been amended (claim 5 was only included because it depends from claim 4).

35 USC § 102

The rejection of claims 1 and 3 under 35 U.S.C. 102(b) as being anticipated by Warman (Nature Genetics, 1993, Vol. 3, pg 79-82) has been withdrawn because Warman did not teach SEQ ID NO:2 now included in the claims.

The rejection of claims 1 and 3-5 under 35 U.S.C. 102(b) as being anticipated by Jacenko (Nature, 1993, Vol. 365, pg 56-61) has been withdrawn because Jacenko did not teach SEQ ID NO:2 now included in the claims.

The art did not teach or suggest a nucleic acid sequence comprising SEQ ID NO:2.

Double Patenting

The rejection of claims 1 and 3 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 and 7 of U.S. Patent No. 6,369,295 has been withdrawn in view of the terminal disclaimer filed 6-10-04, which has been entered.

The rejection of claim 2 under 35 U.S.C. 101 as claiming the same invention as that of claim 6 of prior U.S. Patent No. 6,369,295 has been withdrawn because claim 2 has been cancelled.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wilson who can normally be reached at the office on Monday, Tuesday, Thursday and Friday from 9:30 am to 6:00 pm at 571-272-0738.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached on 571-272-0804.

The official fax number for this Group is (703) 872-9306.

Michael C. Wilson



MICHAEL WILSON
PRIMARY EXAMINER